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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JUKKA TUOMI

Appeal 2009-007314
Application 10/761,584[1]
Technology Center 2400

Before HOWARD B. BLANKENSHIP, JEAN R. HOMERE, and JAMES R. HUGHES, *Administrative Patent Judges*.

HOMERE, *Administrative Patent Judge*.

DECISION ON APPEAL[2]

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[1] Filed on January 22, 2004. This application claims foreign priority to 0324878.8, filed October 24, 2003. The real party in interest is Nokia Corp. (App. Br. 2.)

[2] The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the "MAIL DATE" (paper delivery mode) or the "NOTIFICATION DATE" (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

I. STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134(a) (2002) from the Examiner's final rejection of claims 1 through 3, 5 through 11, and 13 through 26. (App. Br. 4.) Claims 4 and 12 have been cancelled. (*Id.*) We have jurisdiction under 35 U.S.C. § 6(b) (2008).

We affirm.

Appellant's Invention

Appellant invented a method, system, and apparatus for connecting an end user to a wireless local area network ("WLAN") and for providing services via a mobile operator domain. (Spec. 1, para. [0001].)

Illustrative Claim

Independent claim 1 further illustrates the invention as follows:

1. An apparatus, comprising:

an access controller connected to an access network and a domain, wherein the access network is configured to attach to user equipment;

wherein said access controller is configured to control resolving of domain name information for both server addresses within said domain or accessible via said domain, and server addresses that are not within said domain or accessible via said domain; and

wherein said access controller is configured to:

receive from said user equipment a query identifying a domain name; and

in response to a determination that said user equipment is authorized and there is specified for said domain name a server address within said domain or accessible via said domain resolve domain name information for said domain name within said domain; and

> in response to a determination that the user equipment is not authorized and/or that there is no specified server address for said domain name within said domain or accessible via said domain resolve the domain name information for said domain name outside said domain.

Prior Art Relied Upon

The Examiner relies on the following prior art as evidence of unpatentability:

McCanne	US 6,785,704 B1	Aug. 31, 2004 (filed Jul. 3, 2000)
Roos	WO 00/64104	Oct. 26, 2000
Westman	WO 02/47415 A1	June 13, 2002

Rejections on Appeal

The Examiner rejects the claims on appeal as follows:

Claims 1 through 3, 5, 11, 13, 14, 16 through 21, and 26 stand rejected under 35 U.S.C. § 102(e) as being anticipated by McCanne.

Claims 6, 7, 22, and 23 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of McCanne and Roos.

Claims 8 through 10, 15, 24, and 25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of McCanne and Westman.

Appellant's Contentions

Appellant contends that McCanne discloses only returning the same Internet Protocol ("IP") address by specifying a different port number according to whether or not the client is authorized, whereas the claimed invention resolves a domain name within or outside a domain depending on whether or not the client is authorized. (App. Br. 13-14.) In particular,

Appellant argues that McCanne fails to disclose that the APAR-DNS ("Administratively Provisioned Interdomain Anycast Routing-Domain Name Service") server returns an IP address that is outside a current domain when the client is not authorized. (*Id.*)

Further, Appellant alleges that the Examiner's position is not supported by substantial evidence because the Examiner mischaracterizes McCanne's disclosure. (Reply Br. 5-9.) In particular, Appellant contends that it is inaccurate for the Examiner to characterize McCanne's disclosure as teaching APAR-DNS servers that control the address resolution of any domain. (*Id.* at 6.) Additionally, Appellant argues that it is inaccurate for the Examiner to characterize McCanne's disclosure as teaching that an APAR-DNS server resolves the request to an IP address that is ignored or outside the domain when a client does not appear to be authorized. (*Id.* at 8.) That is, Appellant alleges that there is no evidence that the IP address is ignored, but rather McCanne only discloses that the port number of a port is ignored. (*Id.*) Moreover, Appellant contends that McCanne fails to disclose that the IP address is outside the domain. (*Id.*)

Examiner's Findings and Conclusions

The Examiner finds that McCanne discloses that APAR-DNS servers control the address resolution for any domain. (Ans. 15.) The Examiner also finds that McCanne discloses that an APAR-DNS server determines whether or not a client is authorized. (*Id.*) Further, the Examiner finds that McCanne discloses that: (1) if the client is authorized, the APAR-DNS server responds to the request with a resolution of the domain name; and (2) if the client does not appear to be authorized, the APAR-DNS server resolves the request to an address that is ignored or outside the domain. (*Id.*)

II. ISSUE

Has Appellant shown that the Examiner erred in finding that McCanne anticipates independent claim 1? In particular, the issue turns on whether McCanne teaches "[an] access controller…configured to control resolving of domain name information for both server addresses within said domain or accessible via said domain, and server addresses that are not within said domain or accessible via said domain," as recited in independent claim 1.

III. FINDINGS OF FACT

The following Findings of Fact ("FF") are shown by a preponderance of the evidence.

McCanne

1. McCanne generally relates to efficiently transmitting data over the Internet and, in particular, to distributing broadcast data from content producers to multiple recipients. (Col. 1, ll. 31-36.)

2. McCanne discloses that the APAR-DNS server is configured with one or more APAR anycast addresses and, therefore, appears as a name server on multiple content distribution networks ("CDNs"). (Col. 16, ll. 38-40.) Put another way, the APAR-DNS server is a single piece of hardware that is capable of supporting multiple virtual CDNs that are owned by third party content service providers or other Internet service providers ("ISPs"). (*Id.* at ll. 40-46.)

3. McCanne discloses utilizing the APAR-DNS routing scheme to limit requests from unauthorized clients. (Col. 31, ll. 11-12.) If the client

appears to be authorized, McCanne discloses that "the APAR-DNS server responds to the request with a resolution of the domain name to an IP address and a port number that…is a port that the content server will connect over." (*Id.* at ll. 15-20.) If the client does not appear to be authorized, McCanne discloses that "the APAR-DNS server will return an IP address and port number of a port that the content server ignores." (*Id.* at ll. 20-23.)

IV. ANALYSIS

35 U.S.C. § 102(e) Rejection

Claim 1

Independent claim 1 recites, in relevant part, "[an] access controller…configured to control resolving of domain name information for both server addresses within said domain or accessible via said domain, and server addresses that are not within said domain or accessible via said domain."

As detailed in the Findings of Fact section above, McCanne discloses distributing broadcast data from content producers to multiple recipients. (FF 1.) In particular, McCanne discloses an APAR-DNS server that supports multiple CDNs, which are owned by either third party content service providers or other ISPs. (FF 2.) Further, McCanne discloses that: (1) if the APAR-DNS server determines that a client making a request is authorized, the APAR-DNS server responds with a resolution of the domain name to an IP address and a corresponding port number the content server will connect over; and (2) if the APAR-DNS server determines that the client making the request is not authorized, the APAR-DNS server responds

with a resolution of the domain to an IP address and a corresponding port number that the content server ignores. (FF 3.)

We find that McCanne's disclosure teaches an APAR-DNS server that supports a plurality of CDNs and resolves a request from a client for a domain name depending on whether or not the client making the request is authorized. In particular, when the APAR-DNS server determines that the requesting client is unauthorized, we find that McCanne's disclosure teaches resolving the domain name by returning both an IP address and corresponding port number that a first CDN ignores. Further, we find that McCanne's disclosure of returning both an IP address and corresponding port number that the first CDN ignores amounts to resolving a domain name that is outside or not accessible via the first CDN. Consequently, by allowing the APAR-DNS server to resolve a domain name outside the first CDN, we find that McCanne's disclosure teaches accessing another domain name via one of the other plurality of CDNs (outside of the first CDN), which the APAR-DNS server also supports. Thus, we find that McCanne's disclosure teaches the disputed limitation.

We are not persuaded by Appellant's argument that McCanne only discloses that the port number of a port is ignored and there is no evidence that the IP address is outside the domain. (Reply Br. 8.) Appellant has not demonstrated error in the Examiner's position. As set forth above, we find more than adequate support in McCanne's disclosure for the Examiner's findings. Consequently, we find that the evidence supports the Examiner's position.

Alternatively, we note that the claimed limitation is directed to a "[an] access controller…*configured to* control resolving of domain name

information for both server addresses within said domain or accessible via said domain, and server addresses that are not within said domain or accessible via said domain." (Claims App'x) (emphasis added.) We find that the cited recitation merely requires that the access controller be capable of resolving domain name information for server addresses within or accessible via a domain, and not within or accessible via the domain. Such recitation does not require, however, that the access controller actually resolve domain name information for server addresses within or accessible via a domain, and not within or accessible via the domain. This recitation is a statement of intended use, which is fully met by an anticipating prior art structure that is capable of performing the recited functions. It has been held that a statement of intended use in an apparatus claim cannot distinguish over a prior art apparatus that discloses all the recited limitations and is capable of performing the recited function. *See In re Schreiber*, 128 F.3d 1473, 1477 (Fed. Cir. 1997). We note that "[a]n intended use or purpose usually will not limit the scope of the claim because such statements usually do no more than define a context in which the invention operates." *Boehringer Ingelheim Vetmedica, Inc. v. Schering-Plough Corp.*, 320 F.3d 1339, 1345 (Fed. Cir. 2003). Although "[s]uch statements often . . . appear in the claim's preamble," *In re Stencel*, 828 F.2d 751, 754 (Fed. Cir. 1987), a statement of intended use or purpose can appear elsewhere in a claim. *Id.* We are therefore satisfied that McCanne discloses an equivalent structure that resolves domain name information for server addresses within or accessible via a domain, and not within or accessible via the domain. (FFs 1-3.) It follows that Appellant has not shown that the Examiner erred in finding that McCanne anticipates independent claim 1.

Claims 2, 3, 5, 11, 13, 14, 16 through 21, and 26

Appellant does not provide separate and distinct arguments for patentability with respect to independent claims 13, 17, and 18, and dependent claims 2, 3, 5, 11, 14, 16, 19 through 21, and 26. Therefore, we select independent claim 1 as representative of the cited claims. Consequently, Appellant has not shown error in the Examiner's rejection of independent claims 13, 17, and 18, and dependent claims 2, 3, 5, 11, 14, 16, 19 through 21, and 26, for the reasons set forth in our discussion of independent claim 1. *See* 37 C.F.R. § 41.37(c)(1)(vii).

35 U.S.C. § 103(a) Rejections

Claims 6 through 10, 15, and 22 through 25

Appellant offers the same argument set forth in response to the anticipation rejection of independent claim 1 to rebut the obviousness rejection of dependent claims 6 through 10, 15, and 22 through 25. (App. Br. 20-28.) We have already addressed this argument in our discussion of independent claim 1, and we found it unpersuasive. Consequently, Appellant has not shown that the Examiner erred in concluding that dependent claims 6, 7, 22, and 23 are unpatentable over the combination of McCanne and Roos, and dependent claims 8 through 10, 15, 24, and 25 are unpatentable over the combination of McCanne and Westman.

V. CONCLUSIONS OF LAW

1. Appellant has not shown that the Examiner erred in rejecting claims 1 through 3, 5, 11, 13, 14, 16 through 21, and 26 as being anticipated under 35 U.S.C. § 102(b).

2. Appellant has not shown that the Examiner erred in rejecting claims 6 through 10, 15, and 22 through 25 as being unpatentable under 35 U.S.C. § 103(a).

VI. DECISION

1. We affirm the Examiner's decision to reject claims 1 through 3, 5, 11, 13, 14, 16 through 21, and 26 as being anticipated under 35 U.S.C. § 102(b).

2. We affirm the Examiner's decision to reject claims 6 through 10, 15, and 22 through 25 as being unpatentable under 35 U.S.C. § 103(a).

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED

Vsh

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